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Note verbale dated 26 October 2004 from the Permanent Mission of Malaysia to the United Nations addressed to the Chairman of the Committee

I have the honour to submit herewith the report by the Government of Malaysia prepared pursuant to operative paragraph 4 of Security Council resolution 1540 (2004) (see annex).

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Annex to the note verbale dated 26 October 2004 from the Permanent Mission of Malaysia to the United Nations addressed to the Chairman of the Committee

REPORT BY MALAYSIA PREPARED PURSUANT TO OPERATIVE PARAGRAPH 4 OF SECURITY COUNCIL RESOLUTION 1540 (2004)

1. Obligations under operative paragraph 1 of Security Council Resolution 1540: *Decides that all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery;*

Malaysia agrees that weapons of mass destruction (WMD) pose a threat to all mankind and therefore is fully committed towards non-proliferation and complete and general disarmament. Malaysia supports international efforts to prevent non-State actors from acquiring WMD as well as to prevent them from attempting to develop, acquire, manufacture, possess, transport, and transfer or use nuclear, chemical or biological weapons and their means of delivery. In this regard, Malaysia has become a party to the major disarmament-related treaties as follows:

(a) Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare of 1925: acceded on 10 December 1970;

(b) Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water [Partial Test Ban Treaty (PTBT)] of 1963: signed on 8 August 1963 and ratified on 15 July 1964;

(c) Treaty on Principles Governing Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (Outer Space Treaty) of 1967: signed on 20 February 1967;

(d) Treaty on the Non-Proliferation of Nuclear Weapons (NPT) of 1968: signed on 1 July 1968 and ratified on 5 March 1970;

(e) Agreement between the Government of Malaysia and the International Atomic Energy Agency (IAEA) for the Application of Safeguards in Connection with the NPT (Safeguards Agreement): signed on 29 February 1972 and entered into force on 29 February 1972;

(f) Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor in the Subsoil Thereof (Sea-Bed Treaty) of 1971: signed on 20 May 1971 and ratified on 21 June 1972;

(g) Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (BWC) of 1972: signed on 10 April 1972 and ratified on 6 September 1991;[1]

[1] Malaysia is currently studying the need to draft specific legislation to implement more effectively its BWC obligations.

(h) Convention on the Prohibition of the Development, Production and Stockpiling of Chemical Weapons and their Destruction (CWC) of 1993: signed on 13 January 1993 and ratified on 20 April 2000;[2]

(i) Comprehensive Nuclear-Test-Ban Treaty (CTBT) of 1996: signed on 23 July 1998; and

(j) South East Asia Nuclear Weapons Free Zone (SEANWFZ) Agreement of 1995: signed on 15 December 1995 and ratified on 11 October 1996.

2. Obligations under operative paragraph 2 of Security Council Resolution 1540: *Decides also that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any Non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;*

Malaysia has put appropriate effective laws in place to prohibit the manufacturing, acquiring, possessing, developing, transporting, transferring or using of nuclear, chemical or biological weapons and their means of delivery. Among the relevant laws that may be used for this purpose are as follows:

(a) Internal Security Act of 1960;
(b) Penal Code;
(c) Customs Act of 1967;
(d) Arms Act of 1960;
(e) Corrosive and Explosive Substances and Offensive Weapons Act of 1958;
(f) Atomic Energy Licensing Act of 1984;
(g) Anti-Money Laundering Act of 2001;
(h) Prevention and Control of Infectious Disease Act of 1988;
(i) Poisons Act of 1952; and
(j) Pesticides Act of 1974.

In addition to the above, the CWC Bill of 2004 once endorsed by the Parliament could be used to monitor the production, use and transfer of chemicals as reflected in Schedule 1, 2 and 3 of the Convention.

Malaysia is also committed to criminalize the financing of terrorism as called for under the United Nations Convention for the Suppression of the Financing of Terrorism. New legislative provisions have been incorporated into the following legislations in order to enable Malaysia to accede to this Convention:

(a) Penal Code;
(b) Criminal Procedure Code;
(c) Subordinate Courts Act of 1948;
(d) Courts of Judicature Act of 1964; and
(e) Anti-Money Laundering Act of 2001 (AMLA).

[2] Currently, the CWC Bill of 2004 that would serve as a measure to implement more effectively the CWC is under the preliminary consideration of the Malaysian Parliament. The Bill is scheduled to be passed and would subsequently be gazetted as law by the Parliament by the end of 2005.

New legislative provisions to freeze, seize and forfeit terrorist assets and property have been incorporated into the AMLA. The amendments to the Penal Code and AMLA have been passed by the Parliament on 20 November 2003 and have been gazetted as law on 25 December 2003. The amended Acts will be brought into force at the same time as the amendments to the Criminal Procedure Code, Subordinate Courts Act of 1948 and Courts of Judicature Act of 1964 after they have been approved by the Parliament. Malaysia is committed to cooperate with other countries to improve the ability to detect and target cash movements that facilitate money laundering and terrorist financing.

3. Obligations under operative paragraph 3 of Security Council Resolution 1540: *Decides also that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:*

a) Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport;

b) Develop and maintain appropriate effective physical protection measures;

c) Develop and maintain appropriate effective border controls and law enforcement to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislations and consistent with inter-national laws;

d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, transshipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and trans-porting that would contribute to proliferation, as well as establishing end-user controls, and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations;

Nuclear Weapons:

Malaysia signed the Treaty on the Non-Proliferation of Nuclear Weapons of 1968 on 1 July 1968 and ratified it on 3 May 1970 and is committed to maintaining South-East Asia as a nuclear-free zone under the South-East Asia Nuclear Weapons Free Zone Agreement (SEANWFZ) of 1995.

Malaysia does not produce nuclear weapons. Although Malaysia does not have a specific legislation on offences related to nuclear weapons, there are at least five domestic laws that can be used to prosecute perpetrators of nuclear weapons-related offences as follows:

(a) The Penal Code:

This legislation criminalizes among others:

- Terrorist acts involving the use of nuclear weapons/materials [Chapter VI A has yet to be put in operation];
- Any act that vitiates the atmosphere in any place so as to make it noxious to the health of persons [section 278];
- Murder and culpable homicide [sections 302 and 304]; and
- Causing grievous hurt by dangerous weapons or means, including by means of any substance that is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal [sections 324 and 326].

(b) The Corrosive and Explosive Substances and Offensive Weapons Act of 1958:
This Act criminalizes the possession of corrosive and explosive substances and the carrying of offensive weapon.

(c) The Arms Act of 1960:
This Act criminalizes among others the possession or use of arms and ammunition without relevant licenses and permits. The expression "arms" is defined widely and encompasses "any weapons of whatever description designed or adapted or which can be adapted for the discharge of any noxious liquid, gas or other thing".

(d) The Customs Act of 1967:
This Act regulates the importation and exportation of all goods, including the prohibited materials under the NPT. The Act also enables the prohibition of the importation and exportation of the prohibited materials.

(e) The Atomic Energy Licensing Act of 1984:
This Act regulates the import, export, use, storage, production, transport and possession or disposal of nuclear materials. It also provides for the control and licensing of the siting, construction and operation of nuclear installations, as well as power of seizure and arrest, and the liability for nuclear damage. Amendments are being proposed to introduce physical protection requirements to enable Malaysia to accede to the Convention on the Physical Protection of Nuclear Material.

The Government of Malaysia has already decided in October 2003 to accede to the Convention on the Physical Protection of Nuclear Material of 1980.

Additional offences under the Draft Amendment Protocol to the Convention on the Physical Protection of Nuclear Material and Nuclear Facilities may also be criminalized in the process of amending the Atomic Energy Licensing Act of 1984 and the Penal Code.

Malaysia has only one nuclear facility that is subjected to physical protection under the Agreement between the Government of Malaysia and the IAEA and the United States Concerning the Transfer of a Research Reactor and Enriched Uranium (IAEA Project and Supply Agreement) concluded in 1980, as well as the Safeguards Agreement of 1972 between the Government of Malaysia and the IAEA.

As a member of the IAEA, Malaysia already adheres to and implements the IAEA guidelines and regulations to domestically controlled nuclear materials. The Internal Security Act of 1960 also enables Malaysia to take appropriate effective preventive action to deal with any threat to its national security.

Malaysia has joined the IAEA Database on Illicit Trafficking of Nuclear Materials and Other Radioactive Sources in 2001 and is obliged to report to the IAEA any case of illicit trafficking of such material, for any such report to be shared with other member States of the Database and with the World Customs Organization and the International Police Organization (INTERPOL).

Scanning machines have been installed by the Royal Malaysian Customs at the major ports and airports to aid in the release process of the goods. Malaysia also participates in the Container Security Initiative (CSI) of the United States to ensure the security of containers to be shipped to the United States from Malaysian ports.

Biological Weapons:

Malaysia signed the BWC on 10 April 1972 and ratified it on 6 September 1991.

Malaysia does not produce biological weapons. Although there is currently no specific legislation in Malaysia to criminalize biological weapons-related offences, Malaysia has domestic laws in place to enable perpetrators of such offences to be effectively prosecuted. The relevant laws are as follows:

(a) The Penal Code:
This legislation criminalizes among others:
- Terrorist acts involving the use of biological weapons [Chapter VI A has yet to be put in operation];
- Any act that vitiates the atmosphere in any place so as to make it noxious to the health of persons [section 278];
- Murder and culpable homicide [sections 302 and 304]; and
- Causing grievous hurt by dangerous weapons or means, including by means of any substance that is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal [sections 324 and 326].

(b) The Corrosive and Explosive Substances and Offensive Weapons Act of 1958:
This Act criminalizes the possession of corrosive and explosive substances and the carrying of offensive weapons.

(c) The Arms Act of 1960:
This Act criminalizes, among others, the possession or use of arms and ammunition without relevant licenses and permits. The expression "arms" is defined widely and encompasses "any weapons of whatever description designed or adapted or which can be adapted for the discharge of any noxious liquid, gas or other thing".

(d) The Customs Act of 1967:
This Act regulates the importation and exportation of all goods, including the prohibited materials under the BWC. The Act also enables the prohibition of the importation and exportation of the prohibited materials.

(e) The Prevention and Control of Infectious Diseases Act of 1988:
This Act, among others, regulates the importation and exportation of pathogenic organisms or substances. A "pathogenic organism or substance" is defined to include any animal, noxious insect, living germ, microbe, bacteria or virus, the culture of any germ, microbe, bacteria or virus or the product of any germ, microbe, bacteria or virus. Meanwhile, under this Act, the Prevention and Control of Infectious Diseases (Importation and Exportation of Human Remains, Human Tissues and Pathogenic Organisms or Substances) Regulation of 2002 has already been drafted and is currently awaiting final approval;

(f) The Plant Quarantine Act of 1976:
This Act consolidates the law relating to the control, prevention and eradication of agricultural pests, noxious plants and plant diseases and extends cooperation in the control of the movement of pests in international trade.

(g) The Internal Security Act of 1960:
This Act enables Malaysia to take appropriate effective preventive action to deal with any threat to its national security.

Malaysia is currently studying the need to draft a specific law to implement more effectively the BWC.

Chemical Weapons:

Malaysia signed the CWC on 13 January 1993 and ratified it on 20 April 2000.

Malaysia does not produce chemical weapons. Certain legislative and administrative measures have been taken to implement more effectively the CWC. The Customs Act of 1967 has been reviewed and amended to include provisions on the importation and exportation of scheduled and unscheduled chemicals that are covered by the CWC.

With effect from 14 September 2000, the Customs Orders for the Prohibition of Exports and Imports of Scheduled Chemicals under the CWC has been enforced. The details are as follows:

(a) Under the Second Schedule of the Customs (Prohibition of Exports) (Amendment) (No.4) Order of 2000 [P.U (A) 338/2000], which came into force on 14 September 2000, an export license must be obtained from the Ministry of International Trade and Industry prior to any exportation of chemicals and their precursors covered under the CWC.

The Third Schedule of the Order specifies the requirements to be adhered to under the relevant laws e.g. export licensing for toxic chemicals such as Amiton must be accompanied with a written approval for the said pesticide issued by the Pesticides Board of the Ministry of Agriculture and that the name of the exporter is to be the same as that stated on the written approval. Currently the Pharmaceutical Services Division of the Ministry of Health is responsible for the control of the said scheduled chemicals as provided for under the Poisons Act of 1952.

(b) Under the Second Schedule of the Customs (Prohibition of Imports) (Amendment) (No. 9) Order of 2000 [P.U. (A) 339/2000], which came into force on 14 September 2000, an import license must be obtained from the Ministry of International Trade and Industry prior to any importation of chemicals and their precursors covered under the CWC.

The Fourth Schedule of the Order specifies the requirements to be adhered to under relevant laws; e.g. import licenses for toxic chemicals such as Amiton must be accompanied by the original copy of the import permit issued by the Pesticides Board of the Ministry of Agriculture. The permit is valid for six months from the date of issue and for one consignment only. In this respect, the original copy of the import permit shall be retained by the Royal Customs Department to prevent any further importation of the said pesticide.

In line with the Customs Orders and with effect from 14 September 2000, Approved Permits (AP) obtained from the Ministry of International Trade and Industry would be required for the import, export and re-export of scheduled chemicals under the CWC. This rule applies to scheduled chemicals listed under the Annex on Chemicals of the CWC except where such chemicals are already controlled by the relevant provisions under the Poisons Act of 1952 (Revised 1989) and the Pesticides Act of 1974, which are under the jurisdiction of the

Pharmaceutical Services Division of the Ministry of Health and the Pesticides Board of the Ministry of Agriculture respectively.

All AP holders of scheduled chemicals are required to submit annual declarations on import and export of the chemicals. The annual declaration is for the purpose of data compilation, with the information to be filled in a prescribed table format that needs to be submitted to the National Authority which would be established under the CWC Bill of 2004 not later than 15 February after the end of the previous calendar year. The Bill has been drafted to implement more effectively the CWC.

Malaysia does not have a comprehensive and specific law on export control. The existing export control laws and regulations are mainly based on economic reasons.

Currently, regulations that are in place to regulate the control of import and export of goods in Malaysia are as follows:

i) Customs Act of 1967;
ii) Customs (Prohibition of Exports) Order of 1998;
iii) Customs (Prohibition of Imports) Order of 1998;
iv) Arms Act of 1960;
v) Explosive Act of 1957;
vi) Exchange Control Act of 1953 (ECA);
vii) Atomic Energy Licensing Act.

Nevertheless, Malaysia is striving to enhance its control over WMD including by enacting appropriate specific legislations and by implementing its obligations under the relevant international conventions and legal instruments to which it is a Party.

Under the ECA, no person shall export any goods of any class of description to a destination prescribed. Furthermore, pursuant to sections 5, 7 and 26 of the ECA, all export proceeds are required to be repatriated back to Malaysia in full and in the prescribed manner (that is in any foreign currency other than the currency of Israel) in accordance with the payment schedule as specified in the sales contract which should not exceed six months from the date of export. Any dealing including transaction relating to finance with the residents of Israel and those specified in Security Council Resolution 1540 (2004) require prior permission from the Controller of Foreign Exchange. Currently, the approach to any transaction relating to those specified in the resolution will adhere to the measures and procedures stipulated by the Security Council. The list of radioactive or nuclear material, substance or eradicating apparatus prescribed under the Atomic Energy Licensing Act of 1984 are subjected to import and export license under the Act is included in both the Customs (Prohibition of Exports and Imports) Order of 1998. There are provisions on nuclear material in transit under the Atomic Energy Licensing Act of 1984.

4. Obligations under operative paragraph 5 of Security Council Resolution 1540: *Decides that none of the obligations set forth in this resolution shall be interpreted so as to conflict with or alter the rights and obligations of State Parties to the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention or alter the responsibilities of the International Atomic Energy Agency or the Organization for the Prohibition of Chemical Weapons;*

Malaysia is mindful of the requirement as envisaged in operative paragraph 5 of the Resolution and shall endeavour to ensure that its obligations under the relevant treaties and legal instruments to which it is a Party to shall not be in conflict with the provisions of the Resolution.

5. Obligations under operative paragraph 6 of Security Council Resolution 1540: *Recognizes the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists;*

In Malaysia, the list of controlled items is annexed to the Customs (Prohibition of Exports) Order of 1998 and Custom (Prohibition of Imports) Order of 1998. The control list is updated from time to time by the Royal Customs Department based on proposals from the relevant agencies. Meanwhile, the Ministry of International Trade and Industry monitors the export and import of chemical materials through Approved Permit (AP).

The Malaysian authorities are also working closely with the IAEA and their foreign counterparts in addressing this issue and investigating cases involving the illicit trafficking of nuclear weapon-related material and equipment, especially by non-State actors.

6. Obligations under operative paragraph 7 of Security Council Resolution 1540: *Recognizes that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infra-structure, implementation experience and/or resources for fulfilling the above provisions;*

Currently, Malaysia does not require assistance in implementing the provisions of the Resolution within its territories. Malaysia is willing to consider requests from other States for assistance as appropriate in the areas of legal and regulatory infrastructure, implementation and/or resources for fulfilling the provisions of the Resolution. However, Malaysia stresses that the provision of such assistance will only be made after due consideration is made by the highest authority of the Government of Malaysia and will be subjected to its available means and resources.

7. Obligations under operative paragraph 8 of Security Council Resolution 1540: *Calls upon all States:*

a) To promote the universal adoption and full implementation, and, where necessary, strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, biological or chemical weapons;

b) To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the key multilateral non-proliferation treaties;

c) To renew and fulfill their commitment to multilateral cooperation, in particular within the framework of the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes;

d) To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws;

Malaysia is fully committed and will continue to encourage the fulfillment of measures as envisaged in operative paragraph 8(a) of the Resolution in all fora.

Malaysia is working towards ensuring more effective compliance by strengthening its legislative and administrative regulatory framework as envisaged in operative paragraph 8(b) of the Resolution. Similarly, Malaysia is committed in ensuring the full compliance of all its commitments to key multilateral disarmament and non-proliferation treaties to which it is a Party to and will continue to work actively in the relevant fora to achieve its aims in this connection.

Malaysia remains fully committed in supporting the IAEA in the exercise of its role as the sole universal body to ensure compliance with the NPT. Malaysia has also been working very closely with the IAEA in investigating cases involving the illicit trafficking of nuclear weapon-related material and equipment especially by non-State actors. In some cases, the information provided by Malaysia has been instrumental in giving the IAEA the required leads to investigate the broader global network involved in such 'nuclear black market' activities. Similarly, Malaysia has been and will continue to extend its support to multilateral cooperation under the framework of the OPCW and the BWC as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes.

The Ministry of International Trade and Industry conducts a series of regular meetings with the Federation of Malaysian Manufacturers (FMM) and Chemical Industries Council of Malaysia (CICM) to inform and discuss the obligations their members under the relevant laws. The FMM and the CICM also conduct regular workshops to inform and update all their members concerning this matter and the representatives of Ministry of International Trade and Industry and the Ministry of Foreign Affairs have been invited to brief workshops participants.

8. Obligations under operative paragraph 9 of Security Council Resolution 1540: *Calls upon all States to promote dialogue and cooperation on non-proliferation so as to address the threat posed by proliferation of nuclear, chemical, or biological weapons, their means of delivery, and related materials;*

Malaysia supports the promotion of dialogue and cooperation to address the threat posed by WMD, their means of delivery and related materials. More importantly and mindful of one of the conclusions of SSOD-I that the existence of nuclear weapons in itself is a threat to the survival humanity and the planet, Malaysia stresses that the complete elimination of weapons of mass destruction, in particular nuclear weapons, will be the only answer to conclusively address the question of possible acquisition and proliferation of such weapons by non-State actors. Addressing the symptoms will not guarantee the desired outcome but addressing the root causes will.

9. Obligations under operative paragraph 10 of Security Council Resolution 1540: *Further to counter that threat, calls upon all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials;*

Malaysia supports cooperative action among States. Malaysia has been cooperating and will continue to cooperate with other States in accordance with its national legal authorities and legislation and consistent with international law to prevent illicit trafficking in WMD and their means of delivery.

Putrajaya, Malaysia
26 October 2004